

claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

When applying this standard, the court accepts as true the factual allegations in the complaint and views them in the light most favorable to the plaintiff. *Hishon v. King and Spalding*, 467 U.S. 69, 73 (1984); *Kohl v. Casson*, 5 F.3d 1141, 1148 (8th Cir. 1993).

Defendants Pool, Sulltrop and Conley seek dismissal because no allegations of deliberate indifference are made against them in the body of the complaint and the theory of respondeat superior does not apply. In response, plaintiff states that "[u]pon information and belief Defendants Pool, Sulltrop, and Conley were contacted by Nurse Angie and/or Nurse Mary during the time in which Plaintiff suffered the constitutional deprivations he alleges in his complaint and Defendants Pool, Sulltrop, and Conley directed the actions of Nurse Angie and/or Nurse Mary and these guided actions directly resulted in the constitutional deprivations alleged by Plaintiff." (Doc. 21 at 1-2.) Defendants replied to plaintiff's response and call the new allegations merely speculations and a floundering attempt to avoid dismissal.

Plaintiff is proceeding pro se and at this stage, the complaint must be viewed in the light most favorable to the plaintiff. If plaintiff believes that discovery will produce evidence that defendants Pool, Sulltrop and Conley directed the actions of Nurse Angie and Nurse Mary or knew of plaintiff's condition and were deliberately indifferent to it, he should be given an opportunity to conduct some discovery on the issue and to properly amend his complaint. Accordingly, defendants' motion to dismiss should be denied.

Plaintiff is advised, nevertheless, that a supervisor cannot be held liable under section 1983 for an employee's unconstitutional actions. *Boyd v. Knox*, 47 F.3d 966, 968 (8th Cir. 1995); *Choate v. Lockhart*, 7 F.3d 1370, 1376 (8th Cir. 1993); *Givens v. Jones*, 900 F.2d 1229, 1233 (8th Cir. 1990). Instead, a supervisor can be held liable only for personal involvement in a constitutional violation, or when his or her corrective inaction amounts to deliberate indifference or tacit authorization of the violation. *Boyd*, 47 F.3d at 968; *Fruit v. Norris*, 905 F.2d 1147, 1151 (8th Cir. 1990).

On March 4, 2005, plaintiff requested an extension of the discovery deadline until November 1, 2005. Plaintiff's motion indicates that he has sent discovery requests to the answering defendants and in those documents has requested the last names of the two nurse

defendants. Plaintiff needs to learn those names in order to obtain service of process on them. This issue clearly needs to be addressed and summons issued, so that the case may proceed and discovery completed. The court assumes the answering defendants will timely respond to the discovery requests and provide the last names of the Jane Doe nurse defendants. The federal rules set forth time limits for obtaining service of process, which in this case has been somewhat delayed because in forma pauperis status was not granted until October 2004. Plaintiff is advised to notify the court at the earliest opportunity of the names and addresses of the unserved defendants so that summons can be issued.

For the reasons set forth above, it is

ORDERED that discovery is extended until November 1, 2005 [24]. It is further RECOMMENDED that defendants' motion of January 31, 2005, to dismiss for failure to state a claim be denied.

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. If additional time is needed, a motion for an extension of time must be filed within twenty days. The motion should state the reasons for the request. *See Nash v. Black*, 781 F.2d 665, 667 (8th Cir. 1986) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this 17th day of March, 2005, at Jefferson City, Missouri.

/s/

WILLIAM A. KNOX
United States Magistrate Judge